

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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Petition of Verizon New England Inc. for Arbitration	)	
Of an Amendment to Interconnection Agreements with	)	
Competitive Local Exchange Carriers and Commercial	)	D.T.E. 04-33
Mobile Radio Service Providers in Massachusetts Pursuant	)	
to Section 252 of the Communications Act of 1934, as	)	
Amended, and the <i>Triennial Review Order</i>	)	

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**COMMENTS OF  
RICHMOND CONNECTIONS, INC. D/B/A RICHMOND NETWORX  
IN RESPONSE TO HEARING OFFICER NOTICE OF AUGUST 23, 2004**

Richmond Connections, Inc. d/b/a Richmond NetWorx ("Richmond NetWorx"), by its counsel, hereby submits its comments in response to the Hearing Officer's notice of August 23, 2004 requesting comment on (i) the Verizon New England Inc. "Notice of Withdrawal of Petition for Arbitration as to Certain Parties," filed August 20, 2004 (the "Verizon Notice"); and (ii) the action of the Federal Communications Commission ("FCC") in its August 20, 2004 *Interim Rules Order*.<sup>1</sup>

In a display of fortuity, the Verizon Notice and the FCC *Interim Rules Order* both found their way to the public on the same day. Both address what is to be done in the wake of elimination of certain Unbundled Network Elements ("UNEs") by the *USTA II* decision, which

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<sup>1</sup> *In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-33 and CC Docket No. 01-338, Order and Notice of Proposed Rulemaking, FCC 04-179 (rel. August 20, 2004) ("*Interim Rules Order*").

overturned portions of the FCC's *Triennial Review Order* ("TRO").<sup>2</sup> And, what disharmony there is between the two can and must be resolved through adherence to the *Interim Rules Order*. It is important to note in this regard that the FCC expressly took into account the commitments that Verizon had made to it and to the *USTA II* Court, as well as Verizon statements both to CLECs and on the record in proceedings such as this one. Considering those commitments and statements, the FCC found it necessary to issue the *Interim Rules Order*.<sup>3</sup> There can be no doubt therefore, that the *Interim Rules Order* controls.

#### Comparison of Verizon Notice and *Interim Rules Order*

Table 1, below, makes the comparison between the material terms of the Verizon Notice and the *Interim Rules Order*.

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<sup>2</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 01-36 (rel. August 21, 2003 ("Triennial Review Order"), *vacated and remanded in part, aff'd in part*, *United States Telecom Association v. FCC*, 359 F. 3d 554 (D.C. Cir. 2004) ("*USTA II*").

<sup>3</sup> *Interim Rules Order* at ¶ 17 and associated footnotes.

Table 1

Comparison of Material Terms and Conditions of the  
Verizon Notice and the *Interim Rules Order*

<u>Provision</u>	<u>Verizon Notice</u>	<u><i>Interim Rules Order</i></u>
Interim provision of UNEs eliminated by TRO or <i>USTA II</i>	Commits to 90 days notice before taking any action on UNEs eliminated by TRO or <i>USTA II</i>	General provision: Until the earlier of (i) six months after public notice of order, or (ii) final unbundling rules, ILECs will continue providing affected UNEs on same basis as that in place on 6/15/04, unless superceded by voluntary agreements, intervening FCC decisions on unbundling or, as to rates only, state commission decisions raising UNE rates.
Rate stability	Affected UNEs will still be offered, but not at TELRIC rates, after notice period	Rates on affected UNEs remain unchanged for six months and are subject to a maximum increase of 15% during the subsequent six-month period.
“Change of law” provisions of underlying interconnection agreements	<p>-- “Change of law” provision in contracts with Richmond NetWorx and other CLECs allows withdrawal of affected UNEs upon notice</p> <p>-- D.T.E. involvement necessary only where parties disagree with Verizon’s interpretation of “change of law” provision</p>	<p>Sole proviso to general provision (para. 23 of <i>Interim Rules Order</i>): “. . . while we require incumbents to continue providing the specified elements at the June 15, 2004 rates, terms and conditions, we do not prohibit incumbents from initiating change of law proceedings that presume the absence of unbundling requirements for [the affected UNEs], so long as they reflect the transition regime set forth below, and provided that incumbents continue to comply with our interim approach until the earlier of (1) Federal Register publication of this Order or (2) the effective date of . . . final unbundling rules . . .</p>

Richmond NetWorx fully appreciates the commitment of Verizon to avoid any actions as to the affected UNEs that would eliminate their availability to CLECS and other affected parties. This commitment, coupled with the superceding actions that the FCC has taken in the *Interim*

*Rules Order*, will go a long way toward avoiding chaos in the competitive telecommunications market.

Insofar as interim provision of UNEs eliminated by TRO or *USTA II* is concerned, the difference between the Verizon Notice and the *Interim Rules Order* are temporal in nature – Verizon offers a 90 day notice period before making any changes, while the FCC regime allows continuation of the affected UNEs a period that could last for up to one year. The FCC has ruled on the interim provision issue, thereby binding Verizon and other ILECs to a salutary transition scheme.

As to rate stability, it must be noted that Verizon has committed to re-price, not eliminate, the affected UNEs. The *Interim Rate Order* creates a rate stability and escalation scheme during an interim period that could last as long as one year. While Verizon has made no commitments as to pricing of the affected UNEs formerly available at TELRIC rates, the FCC’s interim rate stability regime will avoid the rate surprises and shock that could roil telecommunications markets during a transition period that is already difficult enough for the CLECs and other affected parties.

Finally, as to “change of law” provisions in underlying interconnection agreements, there appears to be significant harmony between the Verizon Notice and the *Interim Rate Order*, although the *Interim Rate Order* expands upon Verizon’s obligations. The “change of law” proviso discussed in paragraph 23 of the *Interim Rate Order* represents the only exception to the FCC’s transition scheme. That exception allows for a truncated transition period if an ILEC, pursuant to contractual change of law provisions, receives state commission approval to eliminate the affected UNEs before expiration of the full transition period. The Verizon Notice, at page 2, suggests that any disputes between Verizon and a CLEC over a proposed Verizon

action under an interconnection agreement's change of law provision must be resolved by state commission action. In this regard, the D.T.E. has a vital role to play in carrying out the *Interim Rate Order*. That role is to resolve disputes as to contractual change of law provisions and to grant permission, where appropriate, for change of law provisions to be implemented before the expiration of the *Interim Rate Order's* full transition period.

#### Interconnection Agreement

The Interconnection Agreement between Verizon and Richmond NetWorx provides that Verizon, upon giving 60 days written notice, may discontinue providing "any service, facility, arrangement or benefit required to be furnished" under the agreement in the event that it is determined by a court or regulatory agency of competent jurisdiction in "any unstayed decision, order or determination" that Verizon is no longer required to provide such. The *Interim Rules Order*, which as noted was made public the same day as Verizon's notice of withdrawal, acts as an order of a regulatory agency of competent jurisdiction that Verizon must continue providing UNEs that it otherwise would not be required to provide as a result of *USTA II* under the terms of the FCC's transition scheme. Therefore, Verizon must abide by the transition scheme created by the FCC and it may discontinue providing certain UNEs to Richmond NetWorx only in accordance with that scheme.

#### Conclusion

It is clear that the *Interim Rate Order* reigns supreme on all issues pertaining to changes in ILEC offering of the affected UNEs. The tenor of the regime implemented by the *Interim Rate Order* is one of orderly transition and stability in a time of great industry change. Verizon's own commitments, as embodied in the Verizon Notice, are generally consistent with, if not precisely in accord, with the *Interim Rate Order*. Any conflict between the Verizon Notice and

the *Interim Rate Order* must be resolved in favor of the latter as the governing law in this proceeding.

Respectfully submitted,

RICHMOND CONNECTIONS, INC. d/b/a  
RICHMOND NETWORKX

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